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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	Chapter 11
GENERAL MOTORS CORP., et al.,	Case No. 09-50026(REG)
Debtors.	(Jointly Administered)
	Hon. Robert E. Gerber

**OBJECTION AND RESERVATION OF RIGHTS OF YAHOO! INC. TO DEBTORS'
INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS,
UNEXPIRED LEASES OF PERSONAL PROPERTY**

TO: HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Yahoo! Inc., its subsidiaries and affiliates (collectively, "Yahoo!") hereby files its

*Objection And Reservation Of Rights Of Yahoo! Inc. To Notice Of (I) Debtors' Intent To Assume
And Assign Certain Executory Contracts, Unexpired Leases Of Personal Property, And (II) Cure
Amounts Related Thereto* (the "Objection and Reservation of Rights") to the assumption and/or assignment by General Motors Corporation ("GM"), on behalf of itself and its affiliated debtors

and debtors in possession in the above-referenced cases (collectively, the “Debtors”)¹, of any executory contracts or unexpired leases to which Yahoo! is a counterparty unless and until the Debtors comply with all provisions of the Sale and Assumption Order² entered by the Court on or about June 2, 2009, including without limitation payment of all monetary defaults associated with such contracts or leases.³

STATEMENT OF RELIEF REQUESTED BY YAHOO!

Yahoo! seeks entry of an order requiring that, as a pre-condition to the assumption and assignment of any executory contracts and unexpired leases to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts hereinafter identified on Exhibit “A”), the Debtors comply with all provisions and requirements of the Sale and Assumption Order. More specifically, Yahoo! requests an order that expressly condition approval of any assumption or assignment of any executory contracts or unexpired leases to which it is a counterparty (including without limitation the Yahoo! Contracts) upon --

(1) submission by Debtors of detailed information (*e.g.* the date of each executory contract, full contract title and/or contract number, the parties, *etc.*) to Yahoo! identifying all specific executory contracts and unexpired leases to which Yahoo! is a counterparty and which

¹ The Debtors and their respective Tax ID Numbers are as follows: General Motors Corporation, Tax ID. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and, Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

² See *Order Pursuant To 11 U.S.C. §§ 105, 363, And 365 And Fed. R. Bankr. P. 2002, 6004, And 6006 (I) Approving Procedures For Sale Of Debtors’ Assets Pursuant To Master Sale And Purchase Agreement With Vehicle Acquisition Holdings LLC, A U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline And Sale Hearing Date; (III) Establishing Assumption And Assignment Procedures; And (IV) Fixing Notice Procedures And Approving Form Of Notice* (the “Sale & Assumption Procedure Order”) [Dkt 274].

³ Capitalized terms used in this *Objection and Reservation of Rights*, but which are not defined herein, shall have the meanings ascribed to them in the Sale and Assumption Procedures Order (as hereinafter identified) and, to the extent not defined in such order, then, as ascribed to them in the Sale and Assumption Motion identified hereinafter.

the Debtors seek to assume and to assign;

(2) in the event the Debtors seek to assume and assign the Yahoo! Contracts identified on Exhibit "A," payment of (A) the not less than **\$11,970,477**, and such additional amounts are become due and owing thereafter pursuant to the terms of such contracts, to cure the monetary default incurred up and through the date of assumption of the Yahoo! Contracts, plus (B) all monetary defaults existing with connection all executory contracts and unexpired leases to which Yahoo! is a counterparty and which ultimately are determined to be subject to any *Notice of Intent To Assume and Assign* (as hereinafter identified) as may be served by the Debtors, and all additional executory contracts or unexpired leases that are identified subsequently hereto, subject to adjustment of such amounts once the Debtors (a) specifically identify (i) all executory contracts and unexpired leases the Debtors contends are subject to any *Notice of Intent To Assume and Assign* (as hereinafter identified) served and/or (ii) identify any additional executory contracts or unexpired leases that it seeks to assume and assign and (b) completion by Yahoo! of its final accounting of all monetary defaults pertaining to all executory contracts to be assumed and assigned;

(3) entry of an order specifically providing that only executory contracts or unexpired leases to which Yahoo! is a counterparty are assumed and assigned upon payment of the Contract Counterparty's Cure Amount and satisfaction of any other terms imposed by the Court as a condition of such assumption and assignment; and

(4) reservation of all rights pertaining to any and all executory contracts not specifically identified as Yahoo! Contracts by the Debtors on appropriate notices served as required by Court Order, including without limitation the right to object to the assumption and/or assignment of any executory contracts not listed on Exhibit "A," and to assert additional

cure amounts in connection with such contracts; and

(5) such other and further relief as may be appropriate under the circumstances.

BACKGROUND

1. Prior to commencement of the above-referenced jointly administered Chapter 11 cases, Yahoo! entered into various executory contracts, including without limitation the Yahoo! Contracts identified on Exhibit "A" attached hereto, and Yahoo! provided various services to GM and the other Debtors pursuant to such contracts, and the Debtors became obligated to pay for such services. Exhibit "A" is incorporated by reference as if fully set forth herein

2. On June 1, 2009 (the "Petition Date"), GM and the other Debtors filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code and, continually since that date, the Debtors have operated as debtors-in-possession of their respective bankruptcy estates.

3. On June 1, 2009, the Debtors' filed the Sale and Assumption Motion⁴ and sought entry of an order (A) authorizing and approving procedures to govern the sale process for substantially all the Debtors' assets and notices of (i) the hearing to consider authorization and approval of the sale, (ii) the assumption and assignment of executory contracts and unexpired leases of personal property and of nonresidential real property, and (iii) the approval of the UAW Retiree Settlement Agreement; (B) setting a hearing to consider the sale on June 30, 2009; and (C) authorizing and approving, among other things, (i) the sale of the Debtors' assets

⁴ See the Debtor's Motion Pursuant To 11 U.S.C. §§ 105, 363, And 365 And Fed. R. Bankr. P. 2002, 6004, And 6006 To (I) Approve (A) The Sale Pursuant To Master Sale And Purchase Agreement With Vehicle Acquisition Holdings LLC, A U.S. Treasury-Sponsored Purchaser; Free and Clear of Liens, Claims, Encumbrances And Other Interests; (B) The Assumption And Assignment Of Certain Executory Contracts and Unexpired Leases; And (C) Other Relief; And (II) Schedule Sale Approval Hearing (the "Sale & Assumption Motion") [Dkt 92].

pursuant to the proposed Master Sale and Purchase Agreement and related agreements (the “MPA”) among the Debtors (the “Sellers”) and Vehicle Acquisition Holdings LLC (the “Purchaser”), a purchaser sponsored by the United States Department of the Treasury (the “U.S. Treasury”), free and clear of liens, claims, encumbrances, and other interests (the “363 Transaction”), (ii) the assumption and assignment of certain executory contracts and Leases, and (iii) the approval of UAW Retiree Settlement Agreement.

4. On June 2, 2009, this Court entered the Sale and Assumption Procedures Order, which provides, in pertinent part, as follows:

(a) Objections to the 363 Transaction. All objections to the 363 Transaction [*i.e.*, sale of substantially all of the assets] must be filed with the Court and served upon certain parties so as to be received by the Objection Deadline [*i.e.*, June 19, 2009, at 5:00 p.m.] [See ¶11 of the Sale & Assumption Order.]

(b) Objections To Cure Amount and Contract Assumption/Assignment. Contract Objections and Cure Objections must be filed and served in accordance with the procedure set forth in paragraph 10 of the Sale and Assumption Procedure Order (*see III.*, below). Pursuant to this Order --

(i) The Debtors were required to serve, within three (3) days after entry of this Order (the “Mailing Deadline”) [*i.e.* not later than 6/5/09], a copy of the Sale and Assumption Procedures Order upon the non-Debtor parties to the Assumable Executory Contracts; and

(ii) On or before the Mailing Deadline [*i.e.* not later than 6/5/09], the Debtors were required to serve a notice of the assumption and assignment of the Assumable Executory Contracts and the proposed cure amounts relating to the Assumable Executory Contracts (the “Assumption and Assignment Notice”) upon the non-Debtor parties to the Assumable Executory Contracts.

(c) The Sale And Assumption Order sets forth procedures (the “Assumption and Assignment Procedures”) that govern the assumption and assignment of the Assumable Executory Contracts in connection with the sale of the Purchased Assets to the Purchaser:

(i) The Sellers are required to maintain a schedule (the “Schedule”) of Executory Contracts and Leases that the Purchaser has designated as Assumable Executory Contracts. [See ¶10 of the Sale & Assumption Order.] The Sellers also are required to maintain a secure website (the “Contract Website”) that the non-Debtor counterparty to an Assumable

Executory Contract can access to find current information about the status of its respective Executory Contract or Lease. The Contract Website contains, for each Assumable Executory Contract, (i) an identification of each Assumable Executory Contract that the Purchaser has designated for assumption and assignment and (ii) the Cure Amounts that must be paid to cure any prepetition defaults under such respective Assumable Executory Contract as of the Commencement Date. The information on the Contract Website shall be made available to the non-Debtor counterparty to the Assumable Executory Contract (the “Non-Debtor Counterparty”), but shall not otherwise be publicly available.

(ii) Following the designation of an Executory Contract or Lease as an Assumable Executory Contract, the Debtors also are required to provide notice (the “Assumption and Assignment Notice”) to the Non-Debtor Counterparty to the Assumable Executory Contract setting forth (i) instructions for accessing the information on the Contract Website relating to such Non-Debtor Counterparty’s Assumable Executory Contract and (ii) the procedures for objecting to the proposed assumption and assignment of the Assumable Executory Contract. [See ¶10 of the Sale & Assumption Order.]

5. As of this date, Yahoo! has not been served by the Debtors with any *Notice Of (I) Debtors’ Intent To Assume And Assign Certain Executory Contracts, Unexpired Leases Of Personal Property, And (II) Cure Amounts Related Thereto* (the “Notice of Intent”) or any other document or pleading identifying any executory contracts or unexpired leases to which Yahoo! is a counterparty and which the Debtors seek to assume and assign.

6. Pursuant to the Sale and Assumption Order, the Debtors are required to serve a document on Yahoo! that provides access information to the Contract Website but, to date, Yahoo! has not been served with any document or provided any information concerning the Contract Website. However, a legal assistant for one of Yahoo!’s attorneys has contacted the Debtors’ Call Center and been informed that the Debtors’ records indicate that no Assumption and Assignment Notice has been sent to date but that a “Trade Agreement Notice” has been sent to Yahoo!.

7. Yahoo! has conducted a preliminary review of its books and records pertaining to the Yahoo! Contracts, including those identified on Exhibit “A” attached hereto, and based

thereon submits that (a) the monetary default, as of June 1, 2009, for the Yahoo! Contracts (that is, all executory contracts listed on Exhibit "A") is not less than **\$11,970,477** and that additional amounts may become due and owing from and after June 1, 2009 as shown on Exhibit "A" (collectively, the "Contract Counterparty Cure Amount"), and (b) that such amount may be increased or decreased once the Debtors identify any additional executory contracts that it intends to assume and assign and Yahoo! completes its final review of its books and records.

GROUND FOR THE RELIEF REQUESTED

Failure to Specifically Identify All Executory Contracts To Be Assumed and Assigned Denies Yahoo!'s Due Process

8. Before a creditor's interests may be adversely affected by judicial action, the due process clause of the Fifth Amendment to the United States Constitution requires "notice be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action . . ." and to afford them an opportunity to present their objections. *See City of N.Y. v. New York, N.H. & H. R.R. Co.*, 344 U.S. 293, 297, 73 S.Ct. 299, 301, 97 L.Ed. 333 (1953) (a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights); *U.S. v. Security Indus. Bank*, 459 U.S. 70, 75, 103 S.Ct. 407, 410, 74 L.Ed2d 235 (1982) (Bankruptcy proceedings are subject to the fifth amendment); *Owens-Corning Fiberglass Corp. v. Center Wholesale, Inc. (In re Center Wholesale, Inc.)*, 759 F.2d 1440, 1448 (9th Cir. 1985) *citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). *Accord, In re Golden Books*, 269 B.R. 300, 305 (Bankr. D. Del. 2001) (An assumption notice seeking authority to assume and assign executory contracts, including licenses of intellectual property, is governed by Federal Rule of Bankruptcy Procedure 6006(a)).

9. In the matter before this Court, the Debtors have not served either the Assumption and Assignment Notice, information concerning the Contract Website, or any other pleadings or notices identifying any executory contracts or unexpired leases to which Yahoo! may be a counterparty and which the Debtors seek to assume and assign. Absent the provision of such fundamental information, Yahoo! cannot determine if any executory contracts or unexpired leases to which it is a counterparty are sought to be assumed and assigned. Until that basic information is provided, Yahoo! cannot determine the grounds (if any) barring assumption of such contracts or otherwise governing its rights in this matter, or whether the Debtors have complied with the mandates governing assumption and assignment of executory contracts as set forth in §365(b), (c) and (f) of the Bankruptcy Code.

10. Yahoo! submits that no order authorizing and approving the assumption of any executory contracts and unexpired leases to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts) can be entered without first requiring the Debtors to specify with precision the executory contracts at issue. Permitting assumption and assignment of any executory contracts or unexpired leases without first complying fully with the Sale and Assumption Order will deny Yahoo! a meaningful opportunity to be heard on the issue whether any bar to assumption of any executory contracts to which it is a party may be asserted. Final approval of the assumption or assignment of any executory contracts under the instant circumstances would constitute denial of Yahoo!'s due process rights.

All Defaults Under Any Designated Contract Must Be Cured As A Condition Of Assumption

11. Assuming, *argumendo*, that the Debtors file an Assignment and Assumption Notice and thereafter identify the executory contracts that they propose to assume and to assign, they still must satisfy Section 365(b) (1) of the Bankruptcy Code. Section 365(b)(1) requires the

Debtors to pay all monetary defaults in full and to provide adequate assurance of future performance by the Purchaser as conditions of effectiveness of assumption and assignment of executory contracts and unexpired leases to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts). Therefore, in the event that a debtor has defaulted on an executory contract, Section 365(b)(1) of the Bankruptcy Code prohibits the debtor from assuming the contract unless the debtor:

- (A) cures, or provides adequate assurance that the [debtor] will promptly cure, such default
- (B) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

12. Both pre- and post-petition defaults must be cured: "The other party to the contract or lease that the trustee proposes to assume is entitled to insist that any defaults, whenever they may have occurred, be cured, that appropriate compensation be provided, and that, a past default having occurred, adequate assurance of future performance is available." ³ COLLIER ON BANKRUPTCY § 365.05[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008). Accordingly, to assume an executory contract and unexpired lease to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts), the Debtors must: (a) cure all defaults, or provide adequate assurance of prompt cure; (b) compensate Yahoo! for its pecuniary losses; and (c) provide adequate assurance of future performance. *See Stoltz v. Brattleboro Housing Authority*, 315 F.3d 80, 94 (2nd Cir. 2002). These conditions "protec[t] the creditor's pecuniary interests before requiring a creditor to continue a contractual relationship with a debtor."

13. Alternatively, the Debtors may provide "adequate assurance that [they] will promptly cure" the defaults. *See* 11 U.S.C. 365(b)(1)(A). Adequate assurance of prompt cure can be shown only by "a firm commitment to make all payments and at least a reasonably demonstrable capability to do so." *See In re Embers 86th Street, Inc.*, 184 B.R. 892, 900-01 (Bankr. S.D.N.Y. 1995) (citing *In re R.H. Neil, Inc.*, 58 B.R. 969 (Bankr. S.D.N.Y. 1986)); *accord*. 2 William L. Norton, Jr. & William L. Norton III, NORTON BANKRUPTCY LAW AND PRACTICE § 46:29 (3rd ed. 2008) (emphasis in original) ("Adequate assurance requires a firm commitment by the trustee or debtor-in-possession to make all payments or, at a minimum, to demonstrate a reasonable ability to do so."). Therefore, assumption and assignment of an executory contract is improper where a debtor or its assignee fails to provide adequate assurance of future performance. *See, e.g., In re Metromedia Fiber Network, Inc.*, 335 B.R. 41, 65-66 (Bankr. S.D.N.Y. 2005) (denying proposed assumption where debtor failed to provide adequate assurance of future performance).

The Debtors Have Not Satisfied Section 365

14. The Debtors have failed to provide sufficient information permitting a meaningful opportunity to identify the executory contracts and unexpired leases to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts) or to calculate the monetary default that must be cured with respect to any such contract or to provide adequate assurance that the Debtors will promptly cure their defaults under any of these contracts. Additionally, in the event that the Debtors ultimately determine to seek assumption and assignment of the executory contracts listed on Exhibit "A" attached hereto, they must cure a monetary default under the Yahoo! Contracts – as of June 1, 2009 – of not less than **\$11,970,477** and the monetary default that may continue to increase pursuant to the contracts listed on Exhibit

“A”. To assume any executory contracts or unexpired leases to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts), the Debtors must cure all monetary defaults, whether they arise pre- or post-petition, and provide adequate assurance that all post-petition debts will be paid in full.

RESERVATION OF RIGHTS

15. In the absence of any identification of the executory contracts to be assumed and assigned by the Debtors, Yahoo! expressly asserts and reserves its rights pertaining to any and all executory contracts and unexpired leases to which it is a counterparty (including, without limitation, the Yahoo! Contracts), including any such contracts not listed on Exhibit “A” hereto (the “Yahoo! Excluded Contracts”). This Objection and Reservation of Rights is without prejudice to, and Yahoo! reserves all legal rights and arguments concerning whether, (i) any designation of contracts to be assumed and assigned that may be provided by Debtors is specific enough to include any given contract between Yahoo! and one or more of the Debtors, (ii) any contract designated by the Debtors or the Sellers on the Schedule, any Cure Notice or any Assumption and Assignment Notice is a contract over which the Bankruptcy Court has any jurisdiction, and (iii) a contract designated by the Debtors or Sellers on the Schedule, any Cure Notice or any Assumption and Assignment Notice or otherwise is executory so as to be covered by the terms of the Sale and Assumption Order.

16. Yahoo! specifically reserves all of its rights, interests and claims related to any executory contracts that exist by and between Yahoo!, its affiliates and subsidiaries and the Debtors and their respective affiliates and subsidiaries, including without limitation the right to assert a cure amount with respect to any such contract as hereinafter is determined to be subject to assumption and/or assignment by the Debtors, to commence and maintain an action in any

appropriate forum or jurisdiction, and to take such other actions as may be permitted at law or equity with regard to any such contract (the “Reservation of Rights”).

WHEREFORE, Yahoo! hereby requests the Court enter its order requiring that assumption and assignment of any executory contracts and unexpired leases to which Yahoo! is a counterparty (including, without limitation, the Yahoo! Contracts) be expressly conditioned upon –

(1) submission by Debtors of detailed information (*e.g.* the date of each executory contract, full contract title and/or contract number, the parties, *etc.*) to Yahoo! identifying all specific executory contracts and unexpired leases to which Yahoo! is a counterparty and which the Debtors seek to assume and to assign;

(2) in the event the Debtors seek to assume and assign the Yahoo! Contracts identified on Exhibit “A,” payment of (A) the not less than **\$11,970,477**, and such additional amounts are become due and owing thereafter pursuant to the terms of such contracts, to cure the monetary default incurred up and through the date of assumption of the Yahoo! Contracts, plus (B) all monetary defaults existing with connection all executory contracts and unexpired leases to which Yahoo! is a counterparty and which ultimately are determined to be subject to any *Notice of Intent To Assume and Assign* (as hereinafter identified) as may be served by the Debtors, and all additional executory contracts or unexpired leases that are identified subsequently hereto, subject to adjustment of such amounts once the Debtors (a) specifically identify (i) all executory contracts and unexpired leases the Debtors contends are subject to any *Notice of Intent To Assume and Assign* (as hereinafter identified) served and/or (ii) identify any additional executory contracts or unexpired leases that it seeks to assume and assign and (b) completion by Yahoo! of its final accounting of all monetary defaults pertaining to all

executory contracts to be assumed and assigned;

(3) entry of an order specifically providing that only executory contracts or unexpired leases to which Yahoo! is a counterparty are assumed and assigned upon payment of the Contract Counterparty's Cure Amount and satisfaction of any other terms imposed by the Court as a condition of such assumption and assignment; and

(4) reservation of all rights pertaining to any and all executory contracts not specifically identified as Yahoo! Contracts by the Debtor on appropriate notices served as required by Court Order, including without limitation the right to object to the assumption and/or assignment of any executory contracts not listed on Exhibit "A," and to assert additional cure amounts in connection with such contracts; and

(5) such other and further relief as may be appropriate under the circumstances.

Dated: New York, New York
June 12, 2009

Respectfully submitted,

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